

In The  
**Supreme Court of the United States**  
October Term, 1991

GREGORIO D. TAITAGUE and HENRY BLAS,  
*Petitioners,*  
v.

FIRST ISLAND INDUSTRY, INC., A GUAM  
CORPORATION; CALVO'S INSURANCE  
UNDERWRITERS, INC., A GUAM CORPORATION;  
OXFORD PROPERTIES AND FINANCE, LTD.,  
A HONG KONG CORPORATION; THE ESTATE  
OF MARIA TORRES MARTINEZ, DECEASED, BY  
FATHER VICENTE T. MARTINEZ, ADMINISTRATOR;  
and all other persons unknown (DOES I through

V) claiming any right, title, estate, lien  
or interest in the real property described in  
complaint adverse to Petitioners' ownership,  
or any cloud upon Petitioners' title thereto,

*Respondents.*

**Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

**PETITIONERS' REPLY BRIEF**

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## A.

### STATUTE OF LIMITATIONS MAY NOT BE APPLIED TO A JUDGMENT VOID FOR WANT OF JURISDICTION

A judgment void because of the failure to furnish statutorily required service of process cannot be made the subject of a statute of limitations or other similar time barrier. *In Re V-I-D*, 158 F.2d 964 (7th Cir. 1947); *Simonds v. Norwich Union Indemnity Co.*, 73 F.2d 412 (8th Cir. 1934); *Woods Bros. Const. Co. v. Yankton County S.D.*, 54 F.2d 304 (8th Cir. 1931); *Pollitz v. Wabash R. Co.*, 180 F. 950 (C.A. S.D. N.Y. 1910); *Arenas v. United States*, 95 F. Supp. 962 (S.D. Cal. 1951); *People v. Greene*, 74 Cal. 400, 16 P. 197 (1887); Anno. 154 ALR 818 Comment Note - Lapse Of Time As Bar To Action Or Proceeding For Relief In Respect Of Void Judgment. cf. *Hansberry v. Lee*, 311 U.S. 32 (1940).

This principle has been incorporated into the Territory of Guam's statutory scheme. The Territory of Guam has patterned its Rules of Civil Procedure after the Federal Rules of Civil Procedure. Rule 60(b)(4) of the Territory of Guam's Rules of Civil Procedure provides as follows:

**(b) Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; . . .

This section has been construed in the federal context as precluding any discretion from being exercised when

entertaining a motion pursuant to this rule, *Thos. P. Gonzalez Corp. v. Consajo Nacional Etc.*, 614 F.2d 1247 (9th Cir. 1980), and is expressly exempted from any time limitation, *Meadows v. Dominican Republic C.A.*, 817 F.2d 517 (9th Cir. 1987). It is presumed that Guam's Rule 60(b)(4) would be similarly construed.<sup>1</sup>

Also, California's Code of Civil Procedure § 473 which has been adopted by Guam essentially verbatim has specifically been found *not* to apply to void judgments notwithstanding the unequivocal express language of the statute making same applicable to judgments void for want of service of process and limiting the time in which they may be set aside to one year. *People v. Greene*, *supra*.

## B.

### GUAM'S LAND REGISTRATION LIMITATION STATUTE DOES NOT PROVIDE FOR KNOWLEDGE OF REGISTRATION TO BEGIN THE RUNNING OF THE LIMITATION PERIOD

In contradistinction to the limitation statute examined in *United States v. Mottaz*, 476 U.S. 834 (1986) and *Block v. North Dakota ex rel Bd. of Univ. and School Lands*, 461 U.S. 273 (1983), cited by Respondents, Guam's Land Registration Limitation Statute does not require or provide for knowledge of the registration to commence the

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<sup>1</sup> "We look to relevant Ninth Circuit authority when interpreting a Guam statutory rule that closely tracks a federal procedural rule." (Citations omitted). *de Vera v. Blaz*, 851 F.2d 294 (9th Cir. 1988).

running of the limitation period. Rather, it provides for a one year period from the "registration" of the property.

Also, in contradistinction to the statutory language examined in *Davis v. Dow Chemical Company*, 819 F.2d 231 (9th Cir. 1987),<sup>2</sup> also cited by Respondents, the Guam statute's language is clear and unambiguous so as to preclude any interpretation giving to it a meaning inconsistent with its express language or permitting the engrafting of an exception onto same. *United States v. Bliss*, 172 U.S. 321 (1899); *Amy v. City of Watertown*, 130 U.S. 320 (1888); *Stewart v. Stewart*, 152 Cal. 162, 92 P. 87 (1907); *Nathanson v. Superior Court of Los Angeles County*, 12 Cal.3d 355, 525 P.2d 687 (1974); *Vandall v. Teague*, 142 Cal. 471, 76 P. 35 (1904); *Morrow v. Barker*, 119 C. 65, 51 P. 12 (1897).

### C.

#### THE DOCTRINE OF EQUITABLE TOLLING CANNOT BE USED TO RENDER CONSTITUTIONAL AN OTHERWISE UNCONSTITUTIONAL STATUTE

The Ninth Circuit in dicta indicated that if the Petitioners had filed their motion within one year of learning

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<sup>2</sup> It is instructive to note that the Ninth Circuit in the *Davis v. Dow Chemical Company*, *supra*, decision was construing the Arizona wrongful death statute relying upon the Supreme Court of Arizona's pronouncements in *Kenyon v. Hammer*, 142 Ariz. 69, 688 P.2d 961 (1984). In *Kenyon*, *supra*, the Supreme Court of Arizona indicated that the discovery rule is simply a judicial construction of the word "accrues" which word was used in the Arizona wrongful death statute.

of the "conflicting claim" that it might have applied the doctrine of equitable tolling. This is obvious dicta because Petitioners did not file their action to Quiet Title within one year of learning of the "conflicting claim." Equitable tolling is not a rule of statutory construction but rather a rule of practice to solve exceptional problems. *Board of Regents v. Tomanio*, 446 U.S. 478 (1980); *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974). Therefore, its operation may not be used as a tool of statutory construction to render constitutional an otherwise unconstitutional statute.

Respectfully submitted,

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